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95-18.² Of course, if the Commission ultimately agrees with the MSS Coalition that sharing between MSS and incumbent fixed service ("FS") licensees is feasible for an extended period of time, then adoption of microwave relocation rules such as those applicable in the personal communications services ("PCS") bands will prove unnecessary.

I. BACKGROUND

In Docket 95-18, the MSS Coalition urged the Commission to explore the strong prospects for sharing between incumbent FS licensees and MSS in the 2165-2200 MHz (the proposed MSS downlink),³ consistent with the FCC's *Emerging Technologies* orders.⁴ Only in instances where sharing does not prove feasible should the FCC consider other steps to accommodate affected FS incumbents now using the 2 GHz MSS spectrum.

As the *MSS Coalition Petition* stated, the *First Report and Order*⁵ in this proceeding could be read to say that while modifications or tailorings of the microwave relocation and reimbursement rules and cost-sharing policy may be appropriate in light of the characteristics

² See *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Notice of Proposed Rulemaking, ET Docket No. 95-18, 10 FCC Rcd 5230 (1995) (proposal to allocate the 1990-2025 and 2165-2200 MHz bands to MSS).

³ See Joint Comments of The MSS Coalition, ET Docket No. 95-18 (filed May 17, 1996).

⁴ *Redevelopment of Spectrum to Encourage Incorporation in the Use of New Telecommunications Technologies*, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd 6886 (1992), *recon.* Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993), *recon.* Memorandum Opinion and Order, 9 FCC Rcd 1993 (1994).

⁵ *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-196, 61 Fed. reg. 29679 (June 12, 1996) ("First Report and Order").

of 2 GHz MSS, such rules and policy, in some form, *will* apply to the 2110-2150 and 2160-2200 MHz bands. Believing that the Commission did not intend to abandon the sound approach to accommodating incumbents in the emerging technologies spectrum through sharing wherever feasible, the MSS Coalition filed its *Petition*. The Coalition seeks clarification that sharing between incumbent FS licensees and new systems in the 2110-2150 and 2160-2200 MHz emerging technologies bands will be pursued where feasible, and that a regulatory regime based on other measures will be considered only if deemed appropriate to the circumstances. In other words, the Joint Petitioners urged the FCC to clarify that, as a result of the pending rulemaking to allocate spectrum for in Docket 95-18, the agency has *not* yet determined that relocation, reimbursement, and cost-sharing rules, as set forth in the *First Report and Order*, apply to 2 GHz MSS, and will address these issues only in Docket No. 95-18.⁶

⁶ If, as UTC and AAR believe, the FCC has made an exception to its stated policy of exploring sharing prospects before considering relocation and reimbursement rules, and has already concluded that the relocation, reimbursement, and cost sharing rules applicable in the PCS bands also apply to the 2110-2150 and 2160-2200 MHz bands, the Joint Petitioners strongly advocate that the FCC reconsider its decision. *See MSS Coalition Petition* at 10-14.

II. AAR AND UTC EACH RECOGNIZE THAT THE FCC SHOULD RESOLVE FS-MSS SHARING ISSUES IN DOCKET 95-18

In their respective *Oppositions*, both AAR and UTC allege that the FCC has already determined that the microwave relocation rules (perhaps with some minor modifications) will apply to 2 GHz MSS should the proposed Docket 95-18 allocation be adopted. They both rely upon the FCC's statement in the *First Report and Order* that the relocation rules "apply to all emerging technology services, including those services in the 2110-2150 and 2160-2200 MHz band . . . because the microwave relocation rules already apply to all emerging technology providers."⁷ Nonetheless, both AAR and UTC go on to acknowledge that the prospects for sharing between incumbents and emerging technology system providers -- a matter that must be resolved before the applicability of relocation rules is even considered -- is an open issue in Docket 95-18.⁸

The Joint Petitioners are confident that the Commission will ultimately conclude (in lieu of the PCS-band relocation framework adopted in ET Docket No. 92-9 and confirmed in the *First Report and Order*) that sharing between FS and MSS is workable and must be pursued in the 2 GHz FS bands overlapping MSS spectrum, as appropriate. That, however, was not the MSS Coalition's main point in its *Petition*. The Coalition's principal point, as AAR and the UTC appear to recognize, is that "sharing is the single most important and contested issue [in Docket 95-18],"⁹ which alone is "[t]he appropriate proceeding for the

⁷ *First Report and Order*, ¶ 92 (quoted in *AAR Opposition* at 11; *UTC Opposition* at 8).

⁸ *AAR Opposition* at 10; *UTC Opposition* at 9.

⁹ *AAR Opposition* at 10.

disposition of the MSS Coalition's proposal for the sharing of upper 2 GHz band between MSS and incumbent operations."¹⁰

In short, a decision on sharing between 2 GHz MSS systems and FS incumbents has yet to be made, as well as what the ramifications are for incumbent licensees in the non-PCS emerging technologies spectrum should the Commission agree with the MSS Coalition that sharing can accommodate these licensees for an extended period of time. Moreover, these decisions are to be made in 95-18, as the *Oppositions* themselves rightly urge. Because the *Emerging Technologies* orders championed sharing where feasible, it is inconsistent to conclude that the applicability of the relocation rules (in some form) to the spectrum occupied by 2 GHz MSS is a foregone conclusion. The MSS Coalition does not believe the Commission intended to do so and, for this reason, filed its *Petition* seeking clarification. Given that sharing is actively being explored in Docket 95-18, as AAR and UTC recognize, it follows that the applicability of the Docket 92-9 relocation rules (or some variation thereof) to 2 GHz MSS is also unresolved.

¹⁰ UTC *Opposition* at 9.

III. CONCLUSION

In conclusion, for the foregoing reasons, and those set forth in the *MSS Coalition Petition*, the Joint Petitioners' request for clarification should be granted.

Respectfully submitted,

ICO GLOBAL COMMUNICATIONS

By Cheryl A. Tritt / per my permission
Cheryl A. Tritt
Susan H. Crandall
Stephen J. Kim
MORRISON & FOERSTER
2000 Pennsylvania Avenue, N.W.,
Suite 5500
Washington, D.C. 20006
202-887-1500

Its Attorneys

CELSAT AMERICA, INC.

By Antoinette Cook Bush / per
Antoinette Cook Bush
SKADDEN ARPS SLATE
MEAGHER & FLOM
1440 New York Avenue, N.W.
Washington, D.C. 20005
202-371-7230

Its Attorneys

COMSAT CORPORATION

By Nancy J. Thompson / per
Nancy J. Thompson
COMSAT INTERNATIONAL
COMMUNICATIONS
6560 Rock Spring Drive
Bethesda, Maryland 20817
301-214-3473

By Philip V. Permut
Philip V. Permut
Edward A. Yorkgitis, Jr.
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W.,
Suite 500
Washington, D.C. 20036-2423
202-955-9600

Its Attorneys

**PERSONAL COMMUNICATIONS
SATELLITE CORPORATION**

By Lon C. Levin/sar
Lon C. Levin
Vice President and Regulatory Counsel
**PERSONAL COMMUNICATIONS
SATELLITE CORPORATION**
10802 Parkridge Boulevard
Reston, Virginia 22091
703-758-6000

By Bruce D. Jacobs/sar
Bruce D. Jacobs
**FISHER WAYLAND COOPER
LEADER & ZARAGOZA, L.L.P.**
2001 Pennsylvania Avenue, N.W.,
Suite 400
Washington, D.C. 20006
202-775-3543

Its Attorneys

**HUGHES SPACE AND
COMMUNICATIONS
INTERNATIONAL**

By John P. Janka/sar
Gary M. Epstein
John P. Janka
Michael S. Wroblewski
LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.,
Suite 1300
Washington, D.C. 20004
202-637-2200

Its Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on August 21, 1996, I caused copies of the foregoing "*Reply of the MSS Coalition*" to be delivered via First Class Mail to the following:

Thomas J. Keller
Leo R. Fitzsimon
VERNER, LIIPFERT, BERNHARD,
McPHERSON and HAND, CHARTERED
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005

Jeffrey L. Sheldon
Thomas E. Goode
UTC
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

